

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JABARI SHABABU RHODES,

Defendant-Appellant.

UNPUBLISHED

June 23, 2005

No. 252798

Wayne Circuit Court

LC No. 03-010236-01

Before: O’Connell, P.J., and Schuette and Borrello, JJ.

MEMORANDUM.

Defendant appeals as of right from his bench trial conviction of simple assault, MCL 750.81. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first claims that it was error to admit testimony by the complainant that another man, Andre Lundy, had assaulted her several months after defendant assaulted her. MRE 404(b). We disagree. We review for abuse of discretion a decision by a trial judge to admit evidence. *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003). We will not reverse on an evidentiary issue “unless a substantial right of the party is affected, and . . . a timely objection . . . appears of record” MRE 103(a). In this case, defendant withdrew his objection to the largely irrelevant other acts because it allowed him an opportunity to introduce other acts of his own. Therefore, there was no objection in the record. Moreover, this was a bench trial, and a judge understands the law, allowing him or her to ignore the kind of error asserted here and decide the case based on proper evidence alone. *People v Taylor*, 245 Mich App 293, 305; 628 NW2d 55 (2001). Therefore, defendant fails to establish any affect on his substantial rights and his argument fails.

Defendant also argues that he was denied the effective assistance of counsel because his trial lawyer: (1) failed to make a proper objection to the other acts evidence, (2) introduced hearsay evidence and failed to object to hearsay evidence, and (3) introduced evidence that defendant was unemployed at the time of trial. We disagree. Defendant did not raise this issue in the trial court or seek a *Ginther*¹ hearing, so we limit our review of defendant’s claims to

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

mistakes that are apparent on the record. *People v Riley (After Remand)*, 468 Mich 135, 139; 659 NW2d 611 (2003).

To establish a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that counsel's deficient performance prejudiced the defense. In order to demonstrate that counsel's performance was deficient, the defendant must show that it fell below an objective standard of reasonableness under prevailing professional norms. In so doing, the defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. [*Id.* at 140, citations omitted.]

As already noted, counsel's retraction of his objection to other acts evidence was demonstrably a strategic move. The same was true regarding the introduction of the challenged hearsay evidence about why a prosecution witness did not appear for trial. Finally, defendant's unemployment was inconsequential to the trial court's findings of fact and conclusions of law, so the admission of this evidence did not appreciably prejudice defendant.

Affirmed.

/s/ Peter D. O'Connell

/s/ Bill Schuette

/s/ Stephen L. Borrello